

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13793 OF 2016

Dinkar @ Ananda Baburao Kadam

..... Petitioner

VERSUS

Maruti Ganu Chavan & Ors.

..... Respondents

Mr.Manmath S. Athalye for the Petitioner.

Mr.Rahul S. Kadam for the Respondent nos.1 to 7 and 9.

Mr.Harshad A.Sathe for the Respondent nos. 12 and 13.

CORAM : R.D. DHANUKA, J.

DATE : 24th SEPTEMBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 30th March,2016 below Ex.88 rejecting the application filed by the petitioner (plaintiff) *inter alia* praying for amendment to the plaint filed in the suit for partition and seeking deletion of the defendant nos. 12 and 13 from the cause title of the plaint.

2. The constituted attorney of the petitioner is present in court. On instruction, the learned counsel for the petitioner states that it is the case of the petitioner that the plaintiff has already settled dispute amicably with the defendant nos. 12 and 13. The defendant nos. 12 and 13 have accepted the claim of the petitioner that the petitioner has share in the property purchased by the defendant nos. 12 and 13. The

application for amendment was opposed by the other respondents. The learned trial judge has rejected the said application for amendment without recording sufficient reasons.

3. The writ petition is opposed by the contesting respondents on the ground that the suit was for partition of the property and thus the impleadment of all the parties who were sharing the properties was necessary and thus the name of defendant nos. 12 and 13 could not be deleted at the instance of the petitioner. It is submitted that the learned trial judge has rightly rejected the application for amendment filed by the defendant nos. 12 and 13 of the Code of Civil Procedure, 1908.

4. It is not in dispute that the suit was for partition of the property. However the petitioner has settled the dispute amicably with the defendant nos. 12 and 13 and accordingly an application for deletion of their names from the cause title of the plaint and also respective prayers against those defendants was made.

5. Learned counsel for the petitioner submits that this court may clarify in this order that the petitioner will not claim any right in the suit property on the basis of the settlement arrived at between the petitioner and the defendant nos. 12 and 13. Statement is accepted.

6. In my view, since the suit has been amicably settled between the petitioner and the defendant nos. 12 and 13, the application of the plaintiff for deletion of names of defendant nos. 12 and 13 and the requisite prayer against them ought to have allowed by the learned trial

judge. The other defendants are not affected merely because the said application would have been allowed by the learned trial judge. It is however made clear that the petitioner will not be allowed to raise a plea before the learned trial judge that in view of settlement arrived at between the petitioner and defendant nos. 12 and 13, any rights are created in favour of the petitioner insofar as suit against other defendants is concerned.

7. Impugned order dated 30th March, 2016 passed by the learned trial judge is accordingly quashed and set aside.

8. Application (Ex.88) filed by the petitioner is allowed. Amendment to be carried out within three weeks from today. Amended copy of the plaint shall be served upon the contesting defendants within three weeks from the date of carrying out amendment.

9. Writ petition is allowed in the aforesaid terms. No order as to costs.

10. The parties as well as the learned trial judge to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]